

## **REMARKS**

### **Status of the Claims.**

Claims 26-28, 37, and 61-64 are pending with entry of this amendment, claims 1-25, 29-36, 38-56, 57-60, being canceled and claim 64 being added. Claim 26 is amended herein. Support for this amendment is found, for example, at page 49, lines 10-12, where no amplification was defined as less than 1.5 fold copy number, low amplification as 1.5-3 fold copy number, and highly amplified as greater than 3 fold copy number.

### **Objection to the specification.**

The specification was objected to because it allegedly contained empty space on page 2, line 17. The amendment to the specification provided herein obviates this objection.

### **Objection to the claims.**

Claims 26-28, 37, and 61-63 were objected to because it was allegedly not clear in claim 26 what the increase in copy number of ZabC1 was compared to. Claim 26 is amended herein to recite:

... detecting the formation of the hybridization complex, and **an elevated copy number of ZABC1 (SEQ ID NO:9) greater than a 1.5-fold copy number**, and correlating the elevated copy number of ZABC1 (SEQ ID NO:9) with the presence of metastatic breast cancer.

This provides a unambiguous measurement for the elevated ZabC1 thereby obviating this objection.

### **Obviousness-Type Double Patenting.**

Claims 26-28, 37, and 61-63 were rejected under the judicially created doctrine of obviousness-type double patenting in light of claims 1-3 of U.S. Patent No: 6,808,878. A Terminal Disclaimer is provided herewith thereby obviating this rejection.

In view of the foregoing, Applicants believe all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. Should the Examiner seek to maintain the rejections, Applicants request a telephone interview with the Examiner and the Examiner's supervisor.

If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (510) 267-4161.

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Respectfully submitted,

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